

# THE HELEIN LAW GROUP, P.C.

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2005 DEC 29 PM 3:09

December 27, 2005

## Via Overnight Courier

Sharla Dillon, Docket Room Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

***Re: Telecommunications Service Provider's Surety Bond***  
**Docket Nos. 05-00230 and 04-00370**

Dear Ms. Dillon:

On behalf of Business Productivity Solutions, Inc. ("BPS"), transmitted herewith is an original plus thirteen (13) copies of its Tennessee Telecommunications Service Provider's Surety Bond in the amount of \$20,000.

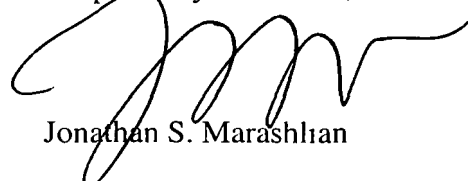
BPS is licensed by the TRA as a telecommunications provider. *See* Docket No. 04-00370. Control of BPS was recently transferred from Eschelon Telecom, Inc. to Manhattan Telecommunications Corporation ("MetTel"). *See* Docket No. 05-00230. The Surety Bond for BPS previously on file with the TRA was obtained under BPS's then parent corporation, Eschelon Telecom, Inc. Upon the transfer of control of BPS to MetTel, the existing Surety Bond could not be assigned. Therefore, MetTel obtained the enclosed Surety Bond on behalf of its new subsidiary.

BPS and its ultimate parent, MetTel, respectfully request the TRA take all appropriate actions to ensure that the above-captioned dockets are updated to reflect the enclosed submission of BPS's Surety Bond.

An additional copy of this response is enclosed herewith, to be date-stamped and returned in the postage prepaid envelope provided.

Should there be any questions regarding this matter, kindly contact the undersigned.

Respectfully submitted,



Jonathan S. Marashlian

Cc: Carol Timberlake

# TENNESSEE REGULATORY AUTHORITY

## TENNESSEE TELECOMMUNICATIONS SERVICE PROVIDER'S SURETY BOND

Bond #: K0 71 93 83 A

**WHEREAS**, Business Productivity Solutions, Inc. (the "Principal"), has applied to the Tennessee Regulatory Authority for authority to provide telecommunications services in the State of Tennessee; and

**WHEREAS**, under the provisions of Title 65, Chapter 4, Section 125(j) of the Tennessee Code Annotated, as amended, the Principal is required to file this bond in order to obtain such authority and to secure the payment of any monetary sanction imposed in any enforcement proceeding brought under Title 65 of the Tennessee Code Annotated or the Consumer Telemarketing Act of 1990 by or on behalf of the Tennessee Regulatory Authority (the "TRA"); and

**WHEREAS**, Westchester Fire Insurance Company (the "Surety"), a corporation licensed to do business in the State of Tennessee and duly authorized by the Tennessee Commissioner of Insurance to engage in the surety business in this state pursuant to Title 56, Chapter 2 of the Tennessee Code Annotated, has agreed to issue this bond in order to permit the Principal to comply with the provisions of Title 65, Chapter 4, Section 125(j) of the Tennessee Code Annotated;

NOW THEREFORE, BE IT KNOWN, that we the Principal and the Surety are held and firmly bound to the STATE OF TENNESSEE, in accordance with the provisions of Tennessee Code Annotated, Title 65, Chapter 4, Section 125(j), in the full amount of twenty thousand dollars and no/100 (\$20,000.00) lawful money of the United States of America to be used for the full and prompt payment of any monetary sanction imposed against the Principal, its representatives, successors or assigns, in any enforcement proceeding brought under Title 65 of Tennessee Code Annotated or the Consumer Telemarketing Act of 1990, by or on behalf of the TRA, for which obligation we bind ourselves, our representatives, successors and assigns, each jointly and severally, firmly and unequivocally by these presents.

This bond shall become effective on the 20th day of December, 2005, and shall be continuous; provided, however, that each annual renewal period or portion thereof shall constitute a new bond term. Regardless of the number of years this bond may remain in force, the liability of the Surety shall not be cumulative, and the aggregate liability of the Surety for any and all claims, suits or actions under this bond shall not exceed Twenty Thousand Dollars (\$20,000.00). The Surety may cancel this bond by giving thirty (30) days written notice of such cancellation to the TRA and Principal by certified mail, it being understood that the Surety shall not be relieved of liability that may have accrued under this bond prior to the date of cancellation

### PRINCIPAL

Business Productivity Solutions, Inc.  
Name of Company authorized by the TRA

\_\_\_\_\_  
Company ID # as assigned by TRA

SIGNATURE OF PRINCIPAL

Name: Arcloni E. Edmonson

Title: COO/EVP

### SURETY

Westchester Fire Insurance Company  
Name of Surety

2 Liberty Plaza, 1601 Chestnut Street, Philadelphia, PA 19103  
Address of Surety

SIGNATURE OF SURETY AGENT

Name: E. Timothy Kenneally

Title: Attorney-in-Fact  
Address of Surety Agent:

55 Maple Avenue - Suite 200  
Rockville Centre NY 11570

THIS BOND IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 125, CHAPTER 4, TITLE 65 OF THE TENNESSEE CODE ANNOTATED AS AMENDED BY CHAFFER NO. 586, 2000 PUBLIC ACTS. SHOULD THERE BE ANY CONFLICT WITH THE TERMS HEREOF AND THE STATUTE OR REGULATIONS PROMULGATED THEREUNDER, THE STATUTE OR REGULATIONS SHALL PREVAIL (POWER OF ATTORNEY FROM AN APPROVED INSURANCE COMPANY MUST BE ATTACHED )

### ACKNOWLEDGMENT OF PRINCIPAL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_ with whom I am personally acquainted and who, upon oath, acknowledged himself to be the individual who executed the foregoing bond on behalf of \_\_\_\_\_ and he acknowledged to me that he executed the same.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

My Commission Expires:

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

### ACKNOWLEDGMENT OF SURETY

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_ with whom I am personally acquainted and who, upon oath, acknowledged himself to be the individual who executed the foregoing bond on behalf of \_\_\_\_\_, the within named Surety, a corporation licensed to do business in the State of Tennessee and duly authorized by the Tennessee Commissioner of Insurance to engage in the surety business in this state pursuant to Title 56, Chapter 2 of the Tennessee Code Annotated, and that he as such an individual being authorized to do so, executed the foregoing bond, by signing the name of the corporation by himself and as such individual.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

My Commission Expires:

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

### APPROVAL AND ENDORSEMENT

This is to certify that I have examined the foregoing bond and found the same to be sufficient and in conformity to law, that the sureties on the same are good and worth the penalty thereof, and that the same has been filed with the Tennessee Regulatory Authority, State of Tennessee, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Name:  
Title:

# Power of Attorney

277421

WESTCHESTER FIRE INSURANCE COMPANY



1123080

**Know all men by these presents:** That **WESTCHESTER FIRE INSURANCE COMPANY**, a corporation of the State of New York, having its principal office in the City of Atlanta, Georgia, pursuant to the following Resolution, adopted by the Board of Directors of the said Company on November 8, 1999, to wit

"RESOLVED, that the following Rules shall govern the execution for the Company of bonds, undertakings, recognizances, contracts and other writings in the nature thereof

- (1) That the President, any Senior Vice President, any Vice President, and Assistant Vice President, or any Attorney-in-Fact, may execute for and on behalf of the Company any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof, the same to be attested when necessary by the Corporate Secretary, or any Assistant Corporate Secretary, and the seal of the Company affixed thereto, and that the President, any Senior Vice President, any Vice President or any Assistant Vice President may appoint and authorize any other Officer (elected or appointed) of the Company, as Attorneys-In-Fact to so execute or attest to the execution of all such writings on behalf of the Company and to affix the seal of the Company thereto
- (2) Any such writing executed in accordance with these Rules shall be as binding upon the Company in any case as though signed by the President and attested to by the Corporate Secretary
- (3) The signature of the President, or a Senior Vice President, or a Vice President, or an Assistant Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted pursuant to this Resolution, and the signature of a certifying Officer and the seal of the Company may be affixed by facsimile to any certificate of any such power, and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company
- (4) Such other Officers of the Company, and Attorneys-In-Fact shall have authority to certify or verify copies of this Resolution, the By-Laws of the Company, and any affidavit or record of the Company necessary to the discharge of their duties
- (5) The passage of this Resolution does not revoke any earlier authority granted by Resolutions of the Board of Directors "

Does hereby nominate, constitute and appoint **E TIMOTHY KENNEALLY, CAROL KENNEALLY, EILEEN DUNHAM and LILLIAN E BOYD** all of the City of Rockville Centre, State of New York, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding Ten Million Dollars (\$10,000,000) and the execution of such writings in pursuance of these presents shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office

IN WITNESS WHEREOF, the said Stephen M. Haney, Vice-President, has hereunto subscribed his name and affixed the corporate seal of the said **WESTCHESTER FIRE INSURANCE COMPANY** this 12th day of October 2005



WESTCHESTER FIRE INSURANCE COMPANY

Stephen M. Haney, Vice President

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA ss

On this 12th day of October, A D 2005, before me, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Philadelphia came Stephen M. Haney, Vice-President of the **WESTCHESTER FIRE INSURANCE COMPANY** to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company, that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written



NOTARIAL SEAL  
Kathleen Terri, Notary Public  
Philadelphia, Philadelphia County  
My commission expires September 22, 2007

Notary Public

I, the undersigned Secretary of **WESTCHESTER FIRE INSURANCE COMPANY**, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a substantially true and correct copy, is in full force and effect

In witness whereof, I have hereunto subscribed my name as Secretary, and affixed the corporate seal of the Corporation, this 20th day of December 2005



George D. Mulligan, Secretary

THIS POWER OF ATTORNEY MAY NOT BE USED TO EXECUTE ANY BOND WITH AN INCEPTION DATE AFTER October 12, 2007

**PRINCIPAL'S ACKNOWLEDGEMENT--IF INDIVIDUAL OR FIRM**

State of New York, County of

ss:

On this                      day of                      , before me personally came

to me know to be (the individual) (one of the firm of                      )  
described in and who executed the within instrument, and he thereupon duly acknowledged to me that he executed  
the same (as the act and deed of said firm).

\_\_\_\_\_  
Notary Public

**PRINCIPAL'S ACKNOWLEDGEMENT--IF A CORPORATION**

State of New York, County of

ss:

On this                      day of                      , before me personally came

to me known, who, being by me duly sworn, deposes and says: That he resides in                      ;  
that he is                      of                      ,  
the corporation described in and which executed the within instrument; that he knows the seal of the said corporation;  
that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of  
Directors of the said corporation, and that he signed his name to the said instrument by like order.

\_\_\_\_\_  
Notary Public

**SURETY COMPANY ACKNOWLEDGEMENT**

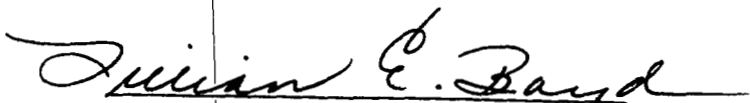
State of New York, County of Nassau

ss:

On this      20th                      day of      December                      , 2005 , before me personally came

E. Timothy Kenneally

to me known, who, being by me duly sworn, did depose and say: That he resides in Rockville Centre NY ;  
that he is Attorney-in-Fact of the Westchester Fire Insurance Company                      , the corporation  
described in and which executed the foregoing instrument; that he knows the corporate seal of said company; that the  
seal affixed to said instrument is such corporate seal of said company, that it was so affixed by the authority granted  
to him in accordance with the by-laws of said corporation; that he signed his name thereto by like authority; that  
the Superintendent of Insurance of the State of New York has, pursuant to Chapter 882 of the Laws of the State  
of New York for the year 1939 constituting Chapter 28 of the Consolidated Laws of the State of New York known  
as the Insurance Law, issued to the Westchester Fire Insurance Company                      his certificate  
that said company is qualified to become surety or guarantor on all bonds, undertakings, recognizances, guarantees  
and other obligations required or permitted by law; and that such certificate has not been revoked.

  
\_\_\_\_\_  
Notary Public

LILLIAN E. BOYD  
Notary Public, State Of New York  
No. 01BO6091908  
Qualified In Nassau County  
Commission Expires 5/05/20 07

**WESTCHESTER FIRE INSURANCE COMPANY****FINANCIAL STATEMENT****December 31, 2004****ADMITTED ASSETS**

BONDS	\$1,363,863,132
SHORT - TERM INVESTMENTS	24,549,145
STOCKS	0
REAL ESTATE	0
CASH ON HAND AND IN BANK	5,338,440
PREMIUM IN COURSE OF COLLECTION*	117,395,478
INTEREST ACCRUED	15,349,513
OTHER ASSETS	365,657,095
<b>TOTAL ASSETS</b>	<b>1,892,152,803</b>

**LIABILITIES**

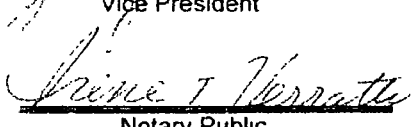
RESERVE FOR UNEARNED PREMIUMS	\$415,496,923
RESERVE FOR LOSSES	1,150,554,701
RESERVE FOR TAXES	5,413,537
FUNDS HELD UNDER REINSURANCE TREATIES	0
OTHER LIABILITIES	(179,492,174)
<b>TOTAL LIABILITIES</b>	<b>\$1,391,972,987</b>

CAPITAL SPECIAL SURPLUS	\$187,300,000
CAPITAL 928,592 SHARES, \$4 85 PAR VALUE	4,503,671
CAPITAL PAID IN	129,098,600
SURPLUS (UNASSIGNED)	179,277,545
SURPLUS TO POLICYHOLDERS	500,179,816
<b>TOTAL</b>	<b>\$1,892,152,803</b>

(\*EXCLUDES PREMIUM MORE THAN 90 DAYS DUE )

**STATE OF PENNSYLVANIA****COUNTY OF PHILADELPHIA**

John P. Taylor, being duly sworn, says that he is Vice President of Westchester Fire Insurance Company and that to the best of his knowledge and belief the foregoing is a true and correct statement of the said Company's financial condition as of the 31 st day of December, 2004

Sworn before me this 27th day of April, 2005  
Vice President  
Notary Public**COMMONWEALTH OF PENNSYLVANIA**

Notarial Seal  
Irene T. Verratti, Notary Public  
City Of Philadelphia, Philadelphia County  
My Commission Expires Nov 15, 2007

Member, Pennsylvania Association Of Notaries

Nov 15 2007  
My commission expires

**POLICYHOLDER DISCLOSURE NOTICE OF  
TERRORISM INSURANCE COVERAGE**

Named Insured			Endorsement Number
Policy Symbol	Policy Number K0 71 93 83 A	Policy Period TO	Effective Date of Endorsement
Issued By (Name of Insurance Company)			

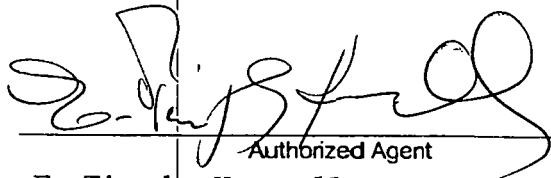
**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

You should be aware that under the Terrorism Risk Insurance Act of 2002 ("The Act") effective November 26, 2002, any losses caused by certified acts of terrorism under your existing coverage may be partially reimbursed by the United States under a formula established by federal law (applicability is subject to the terms and conditions of each individual policy). The Act was specifically designed to address the ability of businesses and individuals to obtain property and casualty insurance for terrorism and to protect consumers by addressing market disruptions and ensure the continued availability of terrorism coverage.

Under the terms of The Act, you may now have the right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Responsibility for Compensation under The Act is shared between insurance companies covered by The Act and the United States. Under the formula set forth in The Act, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible, which is paid by the insurance company providing the coverage.

We are providing you with the terrorism coverage required by The Act. We have not established a separate price for this coverage; however the portion of your annual premium that is reasonably attributable to such coverage is: \$0.00.

  
Authorized Agent

E. Timothy Kenneally  
Attorney-in-Fact